



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201210041**
Release Date: 3/9/2012

Date: December 15, 2011

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-00; 501.03-05; 501.03-11; 501.36-01

Dear _____:

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: October 25, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = business
P = state
X = date
Y = individual

UIL:

501.03-00
501.03-05
501.03-11
501.36-01

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

1. Do you fail the organizational test, causing you to be disqualified for exemption under section 501(c)(3) of the Code? Yes, for the reasons described below.
2. Are you operating in a substantial, non-exempt commercial manner, causing you to fail the operational test under Section 501(c)(3) of the Code? Yes, for the reasons described below.
3. Do your operations result in inurement, precluding you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.

Facts

You were formed on date X in the State of P. Your Articles of Incorporation state in pertinent part you are "a non-membership organization, non-profit, non-partisan, community advocacy organization to provide support and assistance, and to promote citizens' health and information center including a doctor's office for communities."

Your Bylaws state you are formed to "include a community information center and a doctor's office." You will "address the particular health needs of traditionally underserved populations, including low-income individuals, people of minorities, and youth and residents of rural areas."

Your incorporator and president Y, wholly owns a for profit medical practice, B. Y is a doctor and will provide medical services for you. The other members of your governing body include a registered nurse and a receptionist who work full time for B. Y's wife and Y's nephew are also members of your governing body. In total, five of your six governing body members have a business or family relationship.

You initially stated you are a successor to B and completed Schedule G stating that Y will maintain a working relationship with you. You state "as soon as we get the 501(c)(3) permit from IRS, we are going to convert to a non-profit corporation....We are going to cease any for profit practices as soon as we get non profit permission." When we asked how you differ from the for profit you state "No difference. The doctor's donated services will be essentially the same." You also completed Schedule C for hospitals and medical research organizations. Pertinent information on the schedule indicated you will not provide services for charity patients, you do not have a sliding fee schedule and your board of directors is not representative of the community.

You further asserted:

The for-profit corporation [B] is operating in order to make money and to increase share holder value. In addition the for-profit will be subjected to IRS tax laws. The non-profit [you] will have fundraising privileges to plow the money back into the organization without any concern about making money and increasing shareholder value. The non-profit will have certain ax-exempt [sic] privileges.

As soon as you receive non-profit status, all assets from the for-profit corporation are going to be donated to the non-profit corporation. There would be no sharing of assets. The for-profit corporation will be closed upon receiving non-profit status. As soon you receive non-profit status, "any left over profit will be donated to the non-profit corporation." There would be no sharing of income and expenses.

Your activities include:

1. Operate a doctor's office.
2. Activities of participation to promote and protect citizens' health.
3. Research the equal opportunity objective and improve social justice for communities.
4. Joint activities with world citizens' health organizations to protect human health and services for communities.
5. To identify, comment and actively pursue grassroots participation on legislative issues affecting communities on the local, state and federal levels of government.
6. Participate in political, economic, and cultural activities to enhance the citizens' health of communities.
7. To increase public awareness of Korean cultural beliefs with individuals and organizations through event participation within main stream society.
8. To support and train 2nd generation leaders within the Korean-American family.

When asked to describe the specific services you will provide at the doctor's office you listed four services: 1. Internal Medicine; 2. General Medicine; 3. Radiology and 4. Public Health advises [sic] regarding drugs, smoking, drinking, etc.

In clarifying Item 5, you are not going to try to influence any legislation, but you would promote voter registration through a US citizenship application program and citizenship exam classes, as well as to encourage free elections and increase Korean American voter turnout through a voter registration program. You already helped 35 people register to vote.

Item 6 includes only the education of Korean Americans to accept and understand cultural diversity. You will conduct activities to teach and maintain Korean cultural beliefs and traditions through the scholarship program.

We asked how you will ensure that all transactions, financial or otherwise, are kept separate from the for-profit business. You explained as soon as you get non-profit permission you would immediately start reporting all financial transactions according to non-profit rules. All assets, income and expenses from the for-profit will be transferred to the non-profit organization. The for-profit will close completely and cease to exist upon gaining non-profit status, which "will insure that there is no co-existence between two closely related organizations."

The individuals eligible to receive the doctor's services include underprivileged people, seniors and the needy. The "foundation shall address the particular health needs of traditionally underserved populations, including low-income individuals, people of

minorities, and youth and residents of rural areas." You will advertise through community newspapers, newsletters, magazines, brochures and pamphlets.

When asked for copies of any forms the patients will need to complete, you submitted copies of the patient forms from the for-profit corporation B. The forms you submitted were common forms from a typical doctor's office, such as a privacy notice.

Even though Schedule C indicated you do not have a sliding fee schedule you subsequently responded that you will use a sliding scale of fees based on income. While you may follow the state's guidelines for establishing who qualifies as being of poverty and low income, your fee schedule will not be adopted until after you receive exemption.

Regarding compensation, your doctor [Y] will receive approximately \$50,000 per year, the nurse will receive more than \$38,000 per year, and the receptionist will receive more than \$35,000 per year. These amounts were slightly higher than compensation amounts reported on Form 1120-S for B's last three tax years. You explain compensation was determined by investigating similar jobs within a 50 mile radius. These jobs are full time, 40 hours/week. You had not yet adopted a conflict of interest policy, but you intend to establish a policy once you receive exemption. As noted above five of your six members of your governing body have a business or family relationship. In addition, three of the six are compensated. Your Bylaws, section 7.15 provide that no more than 49% of the members of your governing body may be interested persons.

In your final response, you indicate you are no longer converting from a for profit to a non profit. You state 20% of the doctor, nurse and administrative activities will be the non profit [you] and 80% will be the for profit [B]. You will accept the same patients as the B with 80% covered by Medical, Medicare and any other insurance. The remaining 20% you will "accept unfortunate patient [sic] with discount or very low cost." You intend to prorate the liabilities [of B] with 80% to B and 20% to the non profit [you]. No assets will be transferred to you.

Law

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2)(b) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes to one or more exempt purpose and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals as defined in Section 1.501(a)-1(c).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit private interests such as "designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of government.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3), even though its net profits do not inure to the benefit of individual members of the organization.

Revenue Ruling 69-266 1969-1 C.B. 152 held that an organization formed and controlled by a medical doctor to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered is not exempt.

Rev. Rul. 72-369, 1972-3 C.B. 245, described an organization formed to provide

management and consulting services at cost to unrelated exempt organizations. The organization applied for exemption under section 501(c)(3) of the Code. This ruling stated:

An organization is not exempt merely because its operations are not conducted for the purposes of producing a profit.... Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit.

Rev. Rul. 76-441, 1976-2 C.B. 147 held that an organization that takes over a school's assets and liabilities which exceed the value of the assets and include notes owed to former owners and current directors of the school, is serving the directors' private interests and is not operated exclusively for educational and charitable purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In B. S. W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), it was stated that free or below cost service is only one of several factors to consider in making a determination. Others include the particular manner in which the organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits. All of these must be considered, for no single factor alone is determinative. The Court concluded that the petitioner is not an organization described in section 501(c)(3) because its primary purpose is neither educational, scientific, nor charitable, but rather commercial.

In Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979), the Tax Court stated that the sale of prescription drugs to senior citizens and handicapped persons is a trade or business normally carried on for-profit. The court ruled that sales of prescription drugs to the elderly and the handicapped even at a discount is not, without more, in furtherance of a charitable purpose. The court said it is clear that petitioner's exclusive purpose for being is to sell drugs, an activity that is normally carried on by commercial profit making enterprises. The Tax Court said that they failed to see how the fact that it happened to deal in drugs could convert it to a section 501(c)(3) organization. If it could be so converted, then so could a store selling orthopedic shoes, crutches, health foods, or any other product beneficial to health. Virtually everything we buy has an effect, directly or indirectly, on our health. They concluded that they did not believe that the law requires that any organization whose purpose is to benefit health, however, remotely, is automatically entitled, without more, to the desired exemption.

In Easter House v. U.S., 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F.2d 78 (Fed. Cir. 1988), cert. den., 488 U.S. 907 (1988), the organization, in exchange for a

fee, provided adoption services to parents seeking to adopt a child, including services to pregnant women who intended to place their newborns for adoption. These fees were the organization's sole source of income. The Claims Court concluded that the organization's business purpose of operating an adoption service, not the advancement of educational and charitable activities, was its primary goal. It competed with other commercial organizations providing similar services. Thus, "[p]laintiff's competition provides its activities with a commercial hue." 12 Cl. Ct. at 486. Accordingly, the organization did not qualify for exemption under section 501(c)(3) of the Code.

In Living Faith Inc. v. Commissioner, 60 T.C.M., 710, 713 (1990), aff'd 950 F. 2d 365 (Cir. 1991) the court said that the activities were conducted as a business and the organization was in direct competition with other restaurants and health food stores; thus it did not qualify for exemption under Section 501(c)(3). The appellate court stated the factors that the court relied upon to find commerciality and thus offered the best contemporary explanation of the commerciality doctrine. These factors include:

1. The organization sold goods and services to the public.
2. The organization was in direct competition with for profit businesses.
3. The prices set by the organization were based upon pricing formulas common in retail food businesses.
4. The organization utilized promotional material and "Commercial catch phrases" to enhance sales.
5. The organization advertised its services and food.
6. The organization did not receive any charitable contributions.

In Airlie Foundation v. I.R.S., 283 F.Supp. 2d 58 (D.D.C. 2003), the District Court found that the organization was formed principally to organize, host, conduct, and sponsor educational and other charitable functions on its facilities. The organization's patrons were not limited to tax-exempt entities, but included patrons of a private and corporate nature. The organization paid advertising and promotional expenses and derived substantial income from weddings and special events held at its conference center. The court determined that the organization's activities competed with a number of commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a number of charitable and educational activities, these were incidental to its primary activity of operating a for-profit conference center. The court stated, "While plaintiff's organizational purpose is exempt and the foundation operates, in important respects, in an exempt fashion, there is a distinctive "commercial hue" to the way Airlie carries out its business.

Application of Law

Organizational Test

You are not described in section 501(c)(3) of the Code and sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(a)(2)(b) of the regulations because your purposes, as stated in your Articles of Incorporation, are not exclusively for charitable, educational, and other exempt purposes. Specifically, a "non membership organization, non profit, non partisan, community advocacy organization to provide support and assistance, and to promote citizens' health and information center including a doctor's office for communities..." is not among the acceptable 501(c)(3) purposes. Therefore, you have failed the organizational test.

Substantial Non-Exempt Commercial Purpose

You are not described in section 1.501(c)(3)-1(c)(1) of the regulations because you are not primarily engaged in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. You are primarily engaged in the operation of a doctor's office indistinguishable from a for profit. You state there is "no difference" between you and B.

You are not described in section 1.501(c)(3)-1(d)(2) of the regulations because you have failed to establish that your operations will relieve the poor or distressed. You have not defined or otherwise demonstrated any restrictions or limitations on the patients you will serve. You have not developed a sliding fee schedule.

You are not described in section 1.501(c)(3)-1(e) of the regulations because your primary purpose is carrying on a business. The only difference between you and B is that 80% of the patients will be served by B and you will serve the remaining 20%. You describe the 20% as "unfortunate patient" with discount or low cost. However, you did not provide any criteria explaining how individuals are deemed to be "unfortunate" or how the discount or low cost will be determined. The only distinction between your and B's operations is that those that can pay the full cost will be served by B, while you will serve those that can't. You intend to cover the discount or low cost services with charitable contributions.

You are similar to Rev. Rul. 72-369 because you are providing an ordinary business service on a regular basis for a fee. Even though your fees may ultimately be discounted or low cost and not produce a profit you are indistinguishable from a commercial business. Your staffing, compensation, location, hours of operation, patient intake forms and manner of advertising are all similar to an ordinary for profit doctor's office.

You are similar to B. S. W. Group, Inc. v. Commissioner, because your primary purpose is commercial. Your operations are so intertwined with B that one cannot be distinguished from the other. Both you and B will operate at the same location. All patients, both yours and B's, will be seen by the same doctor, nurse and receptionist. The only difference between you and B is that patients who can fully pay will be accounted for on B's records and patients who cannot fully pay will be accounted for on your records. Like in B.S.W., the fact that some patients will receive low cost service is not alone sufficient to qualify for exemption.

You are similar to Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979), because the operation of a doctor's office is normally carried on for-profit. Even though you intend to offer services to patients at a discount, that alone is not sufficient to establish a charitable purpose.

You are similar to Easter House v. U.S., 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F.2d 78 (Fed. Cir. 1988), cert. den., 488 U.S. 907 (1988), in that your business purpose of operating a doctor's office, not the advancement of educational and charitable activities, is your primary goal. You compete with other commercial organizations providing similar services.

You are similar to Living Faith Inc. v. Commissioner, 60 T.C.M., 710, 713 (1990), aff'd 950 F. 2d 365 (Cir. 1991) because your activities are conducted as a business and you are in direct competition with other doctor's offices. The factors of commerciality present in your operations include providing medical services to the public and being in direct competition with for profit doctor's offices. This is evident in that you will advertise using traditional methods. Your method of pricing is common in that those that can pay the full fee do so through B, and those that cannot pay the full price will be served by you with a possible discount or reduced fee.

You are similar to Airlie Foundation v. I.R.S., 283 F.Supp. 2d 58 (D.DC. 2003), in that charitable purposes may be served by providing medical care to some individuals that cannot otherwise afford such care. However, you have not established how such activity is any more than incidental to your overriding purpose of operating a commercial business or increasing the patients seen by your doctor either through you or his for profit business B, nor have you established how that charitable class of individuals will be defined or selected.

Inurement

You are not described in Section 1.501(c)(3)-1(c)(2) of the regulations because your earnings inure to the benefit of Y. Y created you and controls your operations. You were originally formed to take over the operation of Y's for profit medical practice, B and confer tax exempt benefits for Y. Even though you will no longer take over B, you will

continue to operate so closely with B that you cannot be clearly distinguished. Y will benefit through an increase in patients who could not otherwise afford his care and supplement his costs through charitable contributions.

You are not described in section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you serve the private interest of Y. As noted in the facts, your governing body consists of Y, Y's wife, Y's nephew and two employees of B, Y's for profit doctor's office. Your board composition ensures you will be controlled by Y.

You are similar to Revenue Ruling 69-266 1969-1 C.B. 152 because you are formed and controlled by a doctor to examine and treat patients. Fully paying patients are served by B, while you will serve others at a discount or low cost. Both your patients, and those of B, will be treated by Y at the same location.

You are similar to Rev. Rul. 76-441, 1976-2 C.B. 147 because you were originally created to take over the assets and liabilities of a for profit, B. Even though you will no longer take over B, you will assume 20% of the liabilities of B. You have not established whether or not the 20% you will pay will exceed the value. Therefore, you have not established that Y will not benefit. As an insider this constitutes inurement which, at any level, disqualifies you from exemption.

You are similar to Better Business Bureau of Washington, D.C., Inc. v. United States, supra, because you have a substantial non-exempt purpose that destroys a claim for exemption. Operating a doctor's office where paying patients are served by B and "unfortunate" patients are served by you at a discounted or low cost merely increases the number of patients to Y's medical practice and permits you to secure donations or public funds to cover the costs of the non paying patients.

Applicant's Position

We asked for you to cite relevant legal precedent and to fully explain and support your position. You responded by saying "our organization is established for charitable purpose [sic]." You then submitted a new Form 1023. The revised proposed budgets were reduced to a few thousand dollars a year and the compensation was removed. However, the description of your activities remained the same with the primary activity being the operation of a doctor's office.

When later asked for clarification regarding your conversion to a non-profit from a for-profit, you then responded you are not converting. "We are establishing a brand new non-profit organization." You then submitted yet another set of financial data for several years which included substantial salaries, occupancy expenses and other expenses attributable to a doctor's office. You also then provided a breakdown of the percentage of time and funds you will spend on each of your activities which stated: "20/80 percent of doctor, nurse and administrative activities for non-profit and profit organizations

respectively.” You will continue to accept the same patients as the for-profit office, including those on Medical, Medicare or any other type of insurance and that this would comprise 80% of your patients. The other 20% will be “unfortunate” patients at discount or very low cost.

You also stated you will transfer 20% of the for-profit's liabilities to the non-profit, as you were going to be added to B's liability coverage.

You are going to establish this new non-profit and you will share the skills of the doctors, nurses and administration, as well as equipment, with the for-profit [B].

Service Response to Applicant's Position

The changes submitted with your revised Form 1023 were not material. Your primary purpose is to operate a doctor's office in a commercial manner. Merely providing medical services at a reduced fee to “unfortunate” patients alone is not enough to establish a charitable purpose. Y will continue to benefit from your operations through an increase in the number of patients served as well as in the allocation of a portion of liabilities of B to you.

Conclusion

The facts and law show you do not qualify for exemption for three reasons, any one of which standing alone sufficient to deny. First, you fail the organizational test because your purposes as stated in your Articles of Incorporation are broader than permitted purposes under section 501(c)(3) of the Code. Second, you are operated for a substantial non-exempt purpose of operating a commercial business, specifically a doctor's office. Third, your operations result in inurement to Y by increasing patients served by Y, acquiring contributions to cover costs, and the allocation of liabilities from B to you. Accordingly, we conclude you do not qualify for exemption under Code section 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading “Regional Office Appeal”. The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892